IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl. MC.No. 841 of 2004(A)

CC.496/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER/ACCUSED

DAVIES, S/O.KATTILA ANTONY,
AIKARAKUNNU, TRICHUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: RESPONDENTS

STATE OF KERAL REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR (SRI.C.M.KAMMAPPU)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.M.C.No. 841 of 2004

Dated this the 9th day of August, 2007

ORDER

Petitioner is the third accused in a crime involving offences punishable under section 143, 147, 148, 448, 423, 506(ii) read with section 149 of Indian Penal Code ('IPC' for short). The case was taken on file, trial was conducted and the case was posted for questioning of the accused under section 313 of Cr.P.C. According to petitioner, he was compelled to leave India, since he got an employment in a Gulf country and he had to report for duty. He could not therefore attend the questioning. The case against the petitioner was therefore split up and re-numbered as C.C.No.496 of 2003. It is at this juncture that the petitioner has filed a petition to quash the proceedings pending before the lower court.

2. According to learned counsel for petitioner, all the other co-accused in the case were acquitted as per Annexure-D judgment. It is also submitted that, even if the petitioner is made to face trial, the same conclusion will have to be arrived at by the trial court and hence it will only amount to waste of judicial time. Therefore, it is prayed that this Court may interfere under section 482 of the Code of Criminal Procedure.

3. Learned Public Prosecutor submitted that in the light of the decision reported in Moosa v. S.I. of Police [2006(1) KLT 237], the power under section 482 Cr.P.C. cannot be invoked to quash the proceedings on the ground raised. The fact that the co-accused secured acquittal after trial cannot be reckoned as a relevant circumstance for invocation of power under section 482 Cr.P.C. On going through the above decision, I find that the proceedings cannot be quashed on the ground that the co-accused are acquitted especially since the petitioner was absconding. Learned counsel appearing for petitioner submitted that the matter is already compounded and a compounding petition is also filed. But, learned Public Prosecutor pointed out that there are non-compoundable offences also, and hence trial will be necessary. In such circumstances, I find absolutely no ground to interfere or quash the proceedings, as prayed for.

This Petition is dismissed.

Sd/-

K. HEMA, JUDGE.

Krs.